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FILED

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HOWARD HANSON
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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN

RECEIVED

OCT 28 1993

10 CHURCH OF SCIENTOLOGY INTERNATIONAL,)
a California not-for-profit)
11 religious corporation,)

No. 157 680

HUB LAW OFFICES

12 Plaintiff,)

**AMENDED
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
ARMSTRONG'S MOTION TO
COMMENCE COORDINATION
PROCEEDINGS**

13 vs.)

14 GERALD ARMSTRONG; MICHAEL WALTON;)
THE GERALD ARMSTRONG CORPORATION,)
15 a California for-profit)
corporation; DOES 1 through 100,)
16 inclusive,)

Date: November 12, 1993
Time: 9:00 a.m.
Dept: One
Trial Date: None Set

17 Defendants.)

18 _____)

19 **I. INTRODUCTION**

20 This petition involves three cases involving plaintiff Church
21 of Scientology International ("Scientology") and defendants Gerald
22 Armstrong and The Gerald Armstrong Corporation ("collectively
23 "Armstrong"). ^{1/} Armstrong II and Armstrong III are presently

24 _____
25 ¹ The included cases are as follows:

26 (1) Church of Scientology International v. Gerald Armstrong,
DOES 1 to 25, inclusive, Los Angeles County Superior Court, Case
No. BC 052 395 ("Armstrong II");

27 (2) Church of Scientology International v. Gerald Armstrong;
The Gerald Armstrong Corporation; DOES 1 to 25, inclusive, Los
28 (continued...)

1 pending before the Honorable David Horowitz, Department 30 of Los
2 Angeles County Superior Court. Armstrong IV is pending before
3 this Court.

4 Gerald Armstrong was originally sued by the Church of
5 Scientology in Church of Scientology of California v. Gerald
6 Armstrong, Los Angeles Superior Court, Case No. No. C 420 153, for
7 conversion of documents. Armstrong prevailed and the trial
8 court's decision ²/ was affirmed on appeal. (Church of
9 Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060,
10 283 Cal.Rptr. 917.)

11 In 1986, Armstrong's cross-complaint against Scientology was
12 set for trial early in 1987. At that time, Scientology
13 compromised Armstrong's then-attorney, Michael Flynn, who also
14 represented many other former Scientologists who were suing the
15 organization which had violated their civil rights. The result of

16
17 ¹(...continued)
18 Angeles County Superior Court, Case No. BC 084 642 ("Armstrong
III");

19 (3) Church of Scientology International v. Gerald Armstrong;
20 The Gerald Armstrong Corporation; DOES 1 to 100, inclusive, Marin
County Superior Court, Case No. 157 680. ("Armstrong IV.")

21 ² In a blistering opinion, the Honorable Paul G.
Breckenridge, Jr. held, inter alia, that

22 "In addition to violating and abusing its own members civil
23 rights, the organization over the years with its "Fair Game"
24 doctrine has harassed and abused those persons not in the Church
whom it perceives as enemies. The organization is clearly
25 schizophrenic and paranoid, and this bizarre combination seems to
be a reflection of its founder LRH [L. Ron Hubbard]. The evidence
26 portrays a man who has been virtually a pathological liar when it
comes to his history, background, and achievements. The writings
27 and documents in evidence additionally reflect his egoism, greed,
avarice, lust for power, and vindictiveness and aggressiveness
against persons perceived by him to be disloyal or hostile."

28 (Exhibit 1 (a) at pp. 8:24-9:4.)

1 said compromise was that Armstrong, and approximately 20 others,
2 signed a settlement contract. (Exhibit 1 (b), Armstrong
3 Declaration.) Said settlement contract is attached as Exhibit A
4 to, and provides the basis for, each of the complaints in the
5 actions proposed for coordination. (Exhibit 1 (c), Complaint in
6 Armstrong II; Exhibit 1 (d), Complaint in Armstrong III.)

7 Paragraph 4B of the settlement contract required Armstrong
8 not to oppose any appeal Scientology took of Judge Breckenridge's
9 decision. Paragraph 7G of the contract prohibits Armstrong from
10 voluntarily assisting or cooperating with any person adverse to
11 Scientology in any proceeding against Scientology, or cooperating
12 with organization aligned against Scientology. Paragraph 7H
13 prohibits Armstrong from voluntarily participating in any
14 litigation adverse to Scientology unless pursuant to subpoena and
15 to avoid service of any such subpoena. Paragraph 10 prohibits
16 Armstrong from assisting or advising anyone contemplating any
17 claim or engaged in litigation against Scientology or
18 contemplating any activity adverse to the interests of
19 Scientology. Paragraph 18 requires Armstrong to keep the terms of
20 the agreement secret.

21 Armstrong II was originally brought in Marin County Superior
22 Court Action No. 152 229. Based upon the forum selection clause
23 found in Paragraph 20 of the settlement contract, ³/ the

24
25 ³ Paragraph 20 of the settlement agreement states in full:
26 "Notwithstanding the dismissal of the lawsuit pursuant
27 to Paragraph 4 of this Agreement, the parties hereto agree
28 that the Los Angeles Superior Court shall retain jurisdiction
to enforce the terms of this Agreement. This Agreement may
be enforced by any legal or equitable remedy, including but
not limited to injunctive relief or declaratory judgment
(continued...)

1 Honorable Michael B. Dufficy granted Armstrong's motion (Exhibit 1
2 (e), Points and Authorities in Support of Motion to Transfer) to
3 transfer the case to Los Angeles Superior Court. (Exhibit 1 (f),
4 Minute Order dated March 20, 1992.)

5 On May 26 and 27, 1993, the Honorable Ronald M. Sohigian of
6 the Los Angeles Superior Court heard Scientology's motion to
7 enforce Paragraphs 7G, 7H, 10 and 18 of the settlement contract by
8 means of a preliminary injunction. (Exhibit 1 (g), Motion for
9 Preliminary Injunction.) On May 27, 1992, during the course of
10 the hearing on Scientology's motion, the Honorable Ronald M.
11 Sohigian recognized that there was great value to the information,
12 which Scientology sought to suppress, that Armstrong provided to
13 the public. He stated:

14 . . . The information that's being suppressed in this case,
15 however, is information about extremely blame-worthy behavior
16 of the plaintiff which nobody owns; it is information having
17 to do with the behavior of a high degree of offensiveness and
18 behavior which is meritorious in the extreme.

19 It involves abusing people who are weak. It involves
20 taking advantage of people who for one reason or another get
21 themselves enmeshed in this extremist view in a way that
22 makes them unable to resist it apparently. It involves using
23 techniques of coercion.

24 (Exhibit 1 (h) Transcript of Proceedings of May 27, 1993, at p.
25 107.)

26 Judge Sohigian recognized that, in addition to being
27 malevolent in nature, Scientology also acts dishonestly:

28 _____
29 ³(...continued)
30 where appropriate. In the event that any party to this
31 Agreement institutes any action to preserve, to protect or to
32 enforce any right or benefit created hereunder, the
33 prevailing party in any such action shall be entitled to the
34 costs of suit and reasonable attorney's fees."

1 There appears to be in the history of their behavior a
2 very, very substantial deviation between their conduct
3 and standards of ordinary, courteous conduct and
4 standards of ordinary, honest behavior. They're just
5 way off in a different firmament . . . They're the kind
6 of -- it's the kind of behavior which makes you sort of
7 be sure you cut the deck and be sure you've counted all
8 the cards. If you're having a friendly poker game you'd
9 make sure to count all the chips before you dealt any
10 cards.

11 (Id. at p. 108.)

12 Notwithstanding the above, on May 28, 1993, Judge Sohigian
13 issued a preliminary injunction prohibiting Armstrong from
14 voluntarily providing testimony to private individuals considering
15 or prosecuting a claim against Scientology. (Exhibit 1 (i).
16 Minute Order partially granting preliminary injunction.)

17 Armstrong appealed the injunction. (Exhibit 1 (j), Notice of
18 Appeal.)

19 On December 31, 1992, Scientology obtained an Order to Show
20 Cause Why Armstrong Should Not Be Held in Contempt in Armstrong II
21 for allegedly violating the Preliminary Injunction. (Exhibit 1
22 (k), Order to Show Cause.) The Honorable Diane Wayne, however,
23 stated as follows:

24 "THE COURT: Gentlemen. This case is on appeal?

25 MR. GREENE: Yes.

26 . . .
27 THE COURT: It seems to me to be ridiculous to hold
28 this hearing prior to a determination whether or not this is
a valid order. I mean I have some serious questions about
the validity of the order. And I'm not prepared to waste my
time if it's going to be heard and apparently it's going to
be heard very soon [in the Court of Appeal]. . .

THE COURT: I mean it just seems like an inordinant
waste of our time.

. . .

I'll tell you, when I first looked at this order, I
thought the order was clear until I read then part of the
transcript. Then it became unclear to me. And I think that
is in front of the appellate court, whether or not this is an

1 order capable of being followed, because Judge Sohigian's
2 comments that at least it confused me a little bit.

3 (Exhibit 1 (l), Transcript of Proceedings, March 5, 1993, at pp.
4 1-2, 5.) ^{4/}

5 On March 23, 1993, the Honorable David Horowitz, like Judge
6 Wayne with respect to the Contempt proceedings, stayed all trial
7 proceedings in Armstrong II pending a decision from the Second
8 District Court of Appeal on the issue of the illegality of the
9 contract provisions Scientology is seeking to enforce against
10 Armstrong in each of the lawsuits proposed for coordination. ^{5/}

11 ⁴ One reason for the desire of various departments of the
12 Los Angeles Superior Court's for appellate review is the disparate
13 manner in which various departments of that Court have dealt with
14 Armstrong's assertion that the contract is illegal. Originally,
15 Scientology tried to enforce the settlement agreement in
16 Department 56, before the Honorable Bruce R. Geernaert who, upon
17 his review of the settlement agreement, noted:

18 "And I make sure that it is the kind of clear and concise
19 order that can be the subject of a contempt proceeding. So
20 my belief is Judge Breckenridge, being a very careful judge,
21 follows about the same practice and if he had been presented
22 with that whole agreement and if he had been asked to order
23 its performance, he would have dug his feet in because that
24 is one of the -- I have seen -- I can't say -- I'll say one
25 of the most ambiguous, one-sided agreements I have ever read.
26 And I would not have ordered the enforcement of hardly any of
27 the terms had I been asked to, even on the threat that, okay,
28 the case is not settled.

I know we like to settle cases. But we don't want to settle
cases and, in effect, prostrate the court system into making
an order which is not fair or in the public interest.

(Exhibit 1 (m) at pp. 52.)

29 ⁵ In his Order granting Armstrong's motion for a stay,
30 Judge Horowitz found that the "legality and validity of the
31 Agreement" is the "central issue" in Armstrong II. Thus, he held
32 as follows:

33 "D, Mot for stay of proceedings GRANTED. The action is stayed
34 under CCP 916. Counsel are ordered to report any decision by the
35 Court of Appeal to this Department, in writing, within one day of
36 the issuance of the opinion so that this Court may lift the stay.
37 (continued...)

1 All briefing in the Court of Appeal having been completed, the
2 parties await the scheduling of oral argument.

3 On July 8, 1993, in an apparent effort to circumvent Judge
4 Horowitz's stay order, Scientology filed Armstrong III. (Exhibit 1
5 (d).) Substantially identical to Armstrong II, it was ordered
6 transferred Department 30 as a related case. (Exhibit 1 (o).)
7 On October 6, 1993, Judge Horowitz ordered the consolidation of
8 Armstrong III with Armstrong II, and stayed both actions "pending
9 ruling from the Court of Appeals." (Exhibit 1 (p).)

10 Armstrong has Answered only one of the three pending
11 complaints (in Armstrong II), all of which are predicated on the
12 enforceability of settlement contract, brought against him by
13 Scientology. (Exhibit 1 (q), First Amended Answer in Armstrong
14 II.) Over Scientology's demurrer and motion to strike in that
15 action, Armstrong has asserted forty-three affirmative defenses.

16 _____
17 ⁵(...continued)

18 ". . . an appeal stays proceedings in the trial court upon
19 the . . . order appealed from or upon the matters embraced therein
20 or affected thereby ..." CCP 916. As the Church has stated in
21 its Summary Adjudication motions, "The facts are undisputed,
22 however, that Armstrong has breached the Agreement repeatedly and
23 deliberately. Because of these breaches, a preliminary injunction
24 was issued by the Court on May 28, 1992." Obviously, the validity
25 of the Agreement is the basis for the preliminary injunction. One
26 of the basis for the appeal is an attack on the legality and
27 validity of the agreement.

28 The central issue of this case is the legality and validity
of the Agreement. The Court of Appeal could certainly reach that
issue in its determination of the validity of the injunction. If
it does, that ruling could be determinative of many of the issues
of this case. It makes no sense to proceed with this matter until
the Court of Appeal makes its ruling.

Any and all matters set in this department, including but not
limited to the Motions set for 3/31/93, the Final Status
Conference of 4/23/93 and the Trial of 5/3/93, are each advanced
and vacated.

Defendant shall give notice."

(Exhibit 1 (n), Minute Order 3/23/93 Staying Proceedings.)

1 His defenses as to the enforceability of the settlement contract
2 underlying the complaints in all three pending cases will be the
3 same. What almost all of his affirmative defenses have in common
4 is that the contract provisions that Scientology wants the Court
5 to enforce are intended to suppress evidence, obstruct justice,
6 and violate First Amendment guarantees of free speech and right to
7 redress. Thus, Armstrong's position is that said provisions
8 violate public policy and are illegal and unenforceable.

9 The instant motion is the first substantive action that
10 Armstrong has taken in the instant case.

11 **II. THIS COURT IS AUTHORIZED TO REFER**
12 **THE PETITION TO THE JUDICIAL COUNCIL**

13 California Rule of Court 1520 (b) states that a party may
14 request permission from the presiding judge of one of the courts
15 in which one of the included actions is pending to submit a
16 petition for coordination to the Chairperson of the Judicial
17 Council.

18 In the case at bar, a draft copy of the proposed petition is
19 attached hereto and incorporated herein by reference (Exhibit 1
20 (r).) Simply put, all three cases are predicated on the
21 identified provisions of the settlement contract being legal and
22 enforceable. Armstrong says such provisions are not legal and has
23 litigated the question in the context of Scientology's motion for
24 a preliminary injunction in Armstrong II and now in the Second
25 District Court of Appeal. Judge Horowitz in Department 30 of the
26 Los Angeles Superior Court believes that there is a sufficient
27 likelihood of a dispositive ruling coming from the Second District
28 Court of Appeal that he has stayed all trial proceedings before

1 him in Armstrong II and Armstrong III. The Honorable Diane Wayne,
2 in Department 86 of the same Court, has declined to hold hearings
3 on Scientology's two efforts to have Armstrong held in contempt
4 for allegedly violating a preliminary injunction based on the
5 contract.

6 Under these circumstances, where all the litigation has been,
7 and is, in the Los Angeles Superior Court, and where the claims
8 and defenses are the same, to refer Armstrong's petition to the
9 Judicial Council for the purpose coordinating this case with would
10 "promote judicial efficiency and economy by providing for the
11 unified management of both the pretrial and trial phases of the
12 coordinated cases." (Citicorp N.A., Inc. v. Superior Court (1989)
13 213 Cal.App.3d 563, 566, n.3.)

14 If the Court were not to refer the matter for coordination
15 proceedings, this Court could issue orders contrary to those which
16 have issued in the Los Angeles County Superior Court concerning
17 the same subject matter. The Los Angeles Court is sufficiently
18 doubtful of the legality of the contract that it has chosen not to
19 hold contempt proceedings against Armstrong. Indeed, in Los
20 Angeles the litigation is at a standstill pending a determination
21 of the contract's legality from the Court of Appeal. Meanwhile,
22 in Marin County Superior Court, Scientology is attempting to
23 prosecute a fraudulent conveyance action against Armstrong the
24 effectiveness of which is necessarily predicated upon the legality
25 of the settlement contract. Thus, while Los Angeles Superior
26 Court is sufficiently uncertain of the contract's enforceability,
27 Marin Superior Court is in the position of proceeding as though
28 the contract upon which the instant litigation is based is valid.

1 PROOF OF SERVICE

2 I am employed in the County of Marin, State of California. I
3 am over the age of eighteen years and am not a party to the above
4 entitled action. My business address is 711 Sir Francis Drake
5 Boulevard, San Anselmo, California. I served the following
6 documents: AMENDED MEMORANDUM OF POINTS AND AUTHORITIES;
7 DEFENDANTS' EVIDENCE IN SUPPORT OF DEFENDANTS'
8 MOTION TO COMMENCE COORDINATION PROCEEDINGS

9 on the following person(s) on the date set forth below, by placing
10 a true copy thereof enclosed in a sealed envelope with postage
11 thereon fully prepaid to be placed in the United States Mail at
12 San Anselmo, California:

12 Andrew Wilson, Esquire PERSONAL
13 WILSON, RYAN & CAMPILONGO
14 235 Montgomery Street, Suite 450
15 San Francisco, California 94104

16 LAURIE J. BARTILSON, ESQ. MAIL
17 Bowles & Moxon
18 6255 Sunset Boulevard, Suite 2000
19 Los Angeles, California 90028

20 PAUL MORANTZ, ESQ. MAIL
21 P.O. Box 511
22 Pacific Palisades, CA 90272

23 [X] (By Mail) I caused such envelope with postage thereon
24 fully prepaid to be placed in the United
25 States Mail at San Anselmo, California.

26 [X] (Personal) I caused said papers to be personally service
27 on the office of opposing counsel.

28 [X] (State) I declare under penalty of perjury under the
laws of the State of California that the above
is true and correct.

DATED: October 28, 1993
